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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 8, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Hand Delivered

Re: Comments of Telstra, Inc.
IB Docket No. 97-142

Dear Mr. Caton:

Transmitted herewith, on behalf of Telstra, Inc. are an original and nine copies of its comments in the above-referenced proceeding.

If there any questions concerning this matter, please contact me.

Very truly yours,

Gregory C. Staple

Enclosure

cc (w/encl): Kelly Cameron, Esq.
Douglas A. Klein, Esq.
Susan L. O'Connell, Esq.
International Transcription Services, Inc.

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JUL - 9 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 97-142
Rules and Policies on Foreign Participation	)	
in the U.S. Telecommunications Market	)	

COMMENTS OF TELSTRA, INC.

Telstra, Inc. (TI),[1] by its attorneys, hereby submits these comments in response to the Order and Notice of Proposed Rulemaking (Foreign Participation Notice) in the above-captioned proceeding.[2]

I. Summary of Comments

TI generally supports the Commission's proposal to repeal application of the effective competitive opportunities (ECO) test for Section 214 applications submitted by carriers from World Trade Organization (WTO) member countries. Pending the outcome of this docket, the ECO test also should be waived for any Section 214 application by a carrier from a WTO country which already grants U.S. companies the right to provide facilities-based international telephone services. In such cases, prospective application of the FCC's new rules -- a step the

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[1] TI, a U.S. resale carrier, is affiliated with Telstra Corporation Limited ACN 051 775 556, an Australian carrier providing local exchange, long distance and international services. TI's Section 214 applications to provide facilities-based international services to Australia and other authorized foreign points are pending. See File Nos. ITC-97-319 and ITC-97-320.

[2] Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-195 (released June 4, 1997) (Foreign Participation Notice).

FCC has taken in other rulemaking dockets -- would be consistent with the competitive goals of this proceeding and demonstrate the strong U.S. commitment to the WTO liberalization process.

Second, to ensure that all interested parties have reasonable notice of international carrier applications filed pursuant to the FCC's new market access rules, and related policies for approval of non-standard settlement terms, a "housekeeping" amendment should be made to Sections 61.1001 and 61.1002 of the Rules. Henceforth, the FCC should issue regular public notices regarding: (a) all carrier requests for modification of the International Settlements Policy (ISP) filed under Section 64.1001(f) of the Rules; and (b) all carrier petitions for a declaratory ruling to implement an alternative settlement arrangement (i.e., one at odds with the ISP) under Section 64.1002(a) of the Rules. Both types of carrier filings seek similar relief from the standard ISP conditions which apply to international carrier authorizations granted pursuant to Section 214 of the Communications Act. Interested parties therefore deserve to be given the same public notice when such relief is requested.

At the same time, the Commission should relieve individual carriers filing ISP modification or declaratory ruling requests from the burden of serving copies of their filings on all parties providing the same or similar service on a given route. As numerous new carriers enter the U.S. market (there are already at least 150 facilities-based U.S. carriers), the existing service procedures are increasingly unworkable. They should therefore be replaced by a centralized and uniform FCC public notice procedure.

In a liberalized market, with numerous foreign affiliated and U.S. carriers competing on over 200 routes, and with scores of alternative settlement arrangements, a fair and efficient

FCC-administered public notice regime is essential to ensure that the due process rights of all interested parties are protected.

II. The Proposed New Foreign Carrier Entry Standard Should Be Applied Prospectively To Certain Pending Section 214 Applications

The Foreign Participation Notice proposes to repeal the ECO test with respect to the Section 214 applications of foreign carriers from WTO member countries seeking to provide international facilities-based, resold switched and resold non-interconnected private line services.[3] In the future, carriers from WTO member states, and their U.S. affiliates, would no longer need specifically to demonstrate that their home countries allow U.S. carriers to enter their markets for the provision of said services. The Commission has proposed "to apply this new policy to all proceedings pending before the Commission in any procedural status at the time our new rules become effective."[4]

TI supports the Commission's proposal to discontinue the ECO test for carrier applications from WTO countries. However, rather than wait until these new rules are effective, consumer choice would be enhanced if, pending the outcome of this docket, the FCC waived the existing ECO test for certain applications. Specifically, the ECO test should be waived for applications by carriers with foreign owners or affiliates in WTO countries which already permit U.S. companies to provide facilities-based international telephone service. In such cases, the public interest in grant of the application should be presumed (as it is under the

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[3] Id. ¶ 44.

[4] Id.

proposed rules) and the Commission should not waste its limited resources by having its staff go through the motions of conducting an ECO analysis. Rather, any party opposing the application should have the burden of showing why a grant is not in the public interest.

There is ample precedent for applying new rules during the pendency of a rulemaking docket where the public interest would be served thereby. For instance, in August 1996 the Commission issued a Notice proposing to change the requirement contained in Section 22.903 of the Commission's Rules that Regional Bell Operating Companies (RBOCs) offer cellular services only through a separate affiliate.[5] Rather than wait until the conclusion of the proceeding, however, the Notice granted all RBOCs an interim waiver of the separate affiliate requirement for their provision of out-of-region cellular services.[6] The Commission concluded that the waiver would "benefit consumers by promoting competition" and that the purpose of the separations requirement would not be thwarted by RBOC out-of-region service.[7]

Most recently, the International Bureau and the Wireless Telecommunications Bureau have recognized the WTO Agreement, and national commitments thereunder, as a significant factor in granting waivers of the foreign ownership ceiling in Section 310(b)(4) of the Communications Act. For example, the International Bureau relied on the WTO commitments of Australia and Germany in allowing greater than 25% indirect foreign ownership in two

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[5] See Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, WT Docket No. 96-192, FCC 96-319 (released Aug. 13, 1996).

[6] See id. ¶ 57.

[7] See id.

domestic mobile radio licensees.[8] The Wireless Telecommunications Bureau also gave the WTO Agreement a prospective effect when it extended a deadline for a common carrier licensee to restructure its foreign ownership levels.[9]

The FCC should follow a like course here. Prior to the conclusion of this docket, the FCC should waive the ECO test for carrier applications from any country which has already granted the U.S. and other WTO members the legal right to provide facilities-based international telephone services.

III. The FCC Should Adopt A Centralized, Uniform Public Notice Requirement For Carriers Seeking Relief From The International Settlement Policy (ISP)

To reduce a mounting administrative burden on U.S. international carriers, and to protect the due process rights of all interested parties, a uniform, FCC-administered procedure should be established for all carrier petitions seeking to implement non-standard settlement arrangements.[10] The FCC should not invite scores of foreign-affiliated carriers to enter the U.S., and to provide service at variance with the ISP, without simultaneously taking the

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[8] See PCS d/b/a American Personal Communications, Declaratory Ruling and Order, File No. ISP-97-001 (IB, released May 16, 1997); MAP Mobile Communications, Inc., Order, File No. ISP-96-008 (IB, released May 16, 1997).

[9] See NextWave Personal Communications, Inc., Request for Temporary Waiver of Indirect Alien Ownership Limits, Order, File Nos. 00341CWL96, et al. (WTB, released May 16, 1997)

[10] This public notice proposal is relevant to the instant proceeding because the FCC's proposal to eliminate the ECO test as a factor in reviewing future petitions to establish alternative settlement arrangements, see Foreign Participation Notice ¶ 152, is likely to result in a proliferation of such petitions. It follows that the procedural ramifications of such rule changes should be addressed at the same time.

necessary housekeeping measures to make this new competitive regime work fairly.

The FCC's current public notice rules and policies discriminate between similar carrier petitions for variance of the ISP. The current rules also impose increasingly burdensome self-notification requirements on U.S. carriers. On the one hand, a carrier petition seeking an FCC declaratory ruling to implement an alternative settlement arrangement under Section 64.1002(a) of the Rules is subject to public notice pursuant to the FCC's ISP Flexibility Order.[11] On the other hand, a similar carrier request for an ISP "modification" under Section 64.1001(f) of the Rules is not subject to public notice.[12] In both cases, however, the carrier itself is required to serve other carriers that are known to be providing "the same or similar service" on the route in question.[13]

The FCC should update and harmonize these notice procedures so that they are adequate to cope with the expanded competition anticipated by the Foreign Participation

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[11] See Regulation of International Accounting Rates, CC Docket No. 90-337, Phase II, Fourth Report and Order, FCC 96-459 (released Dec. 3, 1996) (ISP Flexibility Order), ¶ 57.

[12] For instance, on April 7, 1997, Telegroup, Inc. filed a request for a declaratory ruling to establish a $.10 accounting rate for U.S.-Australia switched traffic routed over international private line (IPL) facilities leased in conjunction with its Australia affiliate. See File No. ISP-97-PDR-302. The Telegroup request was placed on public notice by the Commission. See Public Notice, DA 97-813 (released May 14, 1997). On March 5, 1997, a like petition was filed by Primus Telecommunications, Inc. for an ISP modification to implement a $.20 U.S.-Australia accounting rate over interconnected IPL facilities. See File No. ISP-97-W-091. However, the Primus request was submitted in letter format as an "Application for Waiver of the Federal Communications Commission's International Settlements Policy" and was not placed on public notice. Yet, both requests sought authority to route switched traffic over international private line facilities using an accounting rate at variance from that currently available to other U.S. carriers serving the route.

[13] 47 C.F.R. §§ 64.1001(k), 64.1002(d).

Notice. First, to protect the due process rights of all interested parties, the FCC should place all petitions for relief from the ISP on public notice, whether they are filed under Section 64.1001 or Section 64.1002. All international carrier authorizations for switched telephone service issued under Section 214 of the Communications Act incorporate the ISP.[14] Thus, so long as the ISP remains part of the FCC's rules, interested parties deserve to have public notice regarding like carrier requests for relief from the ISP.

Second, this public notice burden should be borne exclusively by the FCC. The agency should not delegate this critical task to petitioning carriers, which typically have a commercial interest in keeping their competitors uninformed. In many cases, a carrier seeking relief from the ISP may also be unaware of all the carriers serving the routes. There are now more than 150 facilities-based U.S. carriers, and it is simply impractical for most carriers, even if acting in good faith, to keep track of which carriers are serving which routes and to maintain current addresses for notice purposes.[15]

Further, a modification request may well affect many carriers that have not yet begun

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[14] The Commission has historically given public notice of both the acceptance and grant of Section 214 applications. See, e.g., Public Notice, Report No. TEL-92-A (released July 2, 1997) (accepting Section 214 applications for filing); Public Notice, Report No. I-8250, DA 97-1401 (released July 3, 1997) (granting Section 214 applications). The public notice grants of Section 214 applications state the conditions under which carriers must operate, including the requirement that they comply with the Commission's ISP. See, e.g., Public Notice, Report No. I-8250, DA 97-1401 (released July 3, 1997), Parts (5) and (9). It follows that any modification of a carrier's Section 214 authorization -- such as waiver of the ISP compliance condition -- requires similar public notice.

[15] There is currently no FCC or, to our knowledge, other database that would allow carriers to determine what other carriers are providing the same or similar service along a given route or that would furnish current carrier addresses.

providing service on a given route or that serve parallel routes used for transit traffic. Yet, the FCC's resolution of an ISP modification request -- as much as a declaratory ruling -- may serve as a precedent for arrangements proposed on other routes.

In these circumstances, the FCC's commitment to regulatory transparency and the due process rights of interested parties requires that like carrier requests for relief from the ISP be subject to like public notice requirements. The current self-notification process is simply insufficient to alert all interested parties as to arrangements which may be unreasonably discriminatory or otherwise unlawful under the Communications Act or FCC Rules. The Commission should modify its Rules accordingly to provide that all ISP modification requests under Section 64.1001(f), and all requests for declaratory ruling under Section 64.1002(a), shall be placed on public notice.[16]

Because such a change in the FCC's Rules only involves agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act are inapplicable.[17] Hence, the FCC can and should implement this pro-competitive rule change in

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[16] The notice requirement need not affect any presumption that, absent a formal opposition or Commission intervention, the modification or declaratory ruling request would be deemed to be granted on the 22nd day after it is filed.

[17] 5 U.S.C. ¶ 553(b)(3)(A) (notice and comment requirements do not apply to, inter alia, "rules of agency organization, procedure, or practice ...."); see, e.g., ISP Flexibility Order ¶ 62 (concluding that notice and comment requirements are inapplicable for rule changes involving agency practice and procedure).

this docket. Before the U.S. market is opened to additional competition, a uniform public notice procedure should be put in place to handle similar requests for relief from the ISP.

Respectfully submitted,

TELSTRA, INC.

By _____

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July 9, 1997

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